FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-562 / 92-534

LEON LOFTSGARD, Individually and as Administrator of the Estate of **SCOTT LEON LOFTSGARD**, Deceased; and **NANCY A. LOFTSGARD**,

000371

Appellees,

vs.

PATRICK JOSEPH DORRIAN; CARRIER CORPORATION, A Corporation; **DART & KRAFT FINANCIAL CORPORATION-VMG**, n/k/a **D & K FINANCIAL CORPORATION**, A Corporation,

Appellants,

and

MICHAEL JAMES FOSTER and **FRANCIS H. FOSTER**,

Defendants.

Appeal from the Iowa District Court for Linn County, William R. Eads, Judge.

The defendants, Patrick Joseph Dorrian, Carrier Corporation and D & K Financial Corporation, appeal the district court's increase of the medical expense portion of the judgment against them. **VACATED AND REMANDED WITH INSTRUCTIONS.**

Richard C. Garberson and Diane Kutzko of Shuttleworth & Ingersoll, P.C., Cedar Rapids, for appellants.

000372

Keith Stapleton and Richard A. Pundt of Luehrsmann Pundt, Cedar Rapids, for appellees.

Considered by Oxberger, C.J., and Donielson and Habhab, JJ.

DONIELSON, J. 000373

On September 28, 1987, Scott Loftsgard was fatally injured in a traffic accident. As administrator of the estate, Scott's father brought suit against the driver and owner of the car in which Scott was a passenger (Fosters), the driver of the other vehicle (Dorrian), the corporation which employed Dorrian and leased his vehicle (Carrier Corporation), and the corporation which actually owned the Dorrian vehicle (D & K Financial).

Scott's parents, in their individual capacities, joined the suit claiming loss of consortium. However, the district court granted summary judgment in the defendants' favor as to their claim. The administrator's wrongful death claim proceeded to a jury trial.

At trial, evidence presented by Loftsgard indicated that the decedent's medical bills amounted to $10,562.10 and that all but $383.22 had been reimbursed by insurance. After the close of the evidence, the jury returned a verdict with the following awards for damages: $32,000 for loss of estate value, $500 for pain and suffering, and $383.22 for medical expenses.

On appeal, we affirmed in part and remanded in part the district court's entry of judgment on the jury's verdict. See Loftsgard v. Dorrian, 476 N.W.2d 730 (Iowa App. 1991). We determined that Loftsgard could be "caught in a double reduction, once at the hands of the jury by the verdict of $383.22, and again by virtue of the subrogation rights of

United Fire & Casualty." We remanded this case to the district court to determine if the proceeds of any recovery received by the estate for medical expenses were pledged to reimburse the health insurance carrier. Upon such a showing, the judgment for medical expenses was to be increased to the amount of $10,562.10. Loftsgard v. Dorrian, 476 N.W.2d at 735.

On remand, the administrator of the estate filed a sworn "pledge" with the district court stating that if the judgment for medical expenses was increased, he would reimburse the health insurance carrier. On March 19, 1992, the district court increased the judgment for medical expenses to $10,562.10. The district court stated that the increase was based upon the administrator's pledge and our directions. Defendants Dorrian, Carrier Corporation, and D & K Financial Corporation appeal.

The defendants claim the district court erred in increasing the judgment. They claim our instructions on remand required a showing by the administrator that the estate was obligated to reimburse the health insurance carrier for its costs whether or not the judgment was increased. They claim the administrator's pledge for medical expenses failed to establish whether the administrator was obligated to reimburse the health insurance carrier regardless of the tort judgment for medical expenses.

In our opinion we stated, 000375

> The result reached in this case is the very circumstance that Justice Harris envisioned in his majority opinion in Schonberger. The plaintiff is caught in a double reduction, once at the hands of the jury by the verdict of $383.22, and again by virtue of the subrogation rights of United Fire & Casualty. . . .
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> This then brings us to the question of how to resolve this rather apparent inconsistency. . . . The defendants, . . . suggest in a footnote in their brief that assuming the jury should have made an adjustment for the subrogation entered that it can be corrected by the court awarding $10,562.10 for the total medical expenses. We believe this matter should be remanded for this purpose.
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> We, therefore remand this case to the district court for a proceeding in which it must be established that the proceeds of any recovery received by the plaintiff for medical and hospital expenses are pledged to reimburse United Fire & Casualty. Upon such a showing, the judgment for medical expenses is to be increased to the amount of $10,562.10. If such showing is not made, the judgment shall remain in the amount fixed by the jury.

Loftsgard v. Dorrian, 476 N.W.2d at 735.

Appellee asserts that he met his burden of showing that the recovery was pledged to repay United Fire & Casualty by filing his "pledge." Appellee misunderstands what we required on remand. Our opinion, taken as a whole in its proper context with Schonberger v. Roberts, 456 N.W.2d 201 (Iowa 1990), sought to avoid a double reduction in recovery. We were not asking appellee to make a pledge to reimburse United Fire & Casualty.

In Schonberger, the injured employee was required by statute to reimburse his workers' compensation insurer. Id., 456 N.W.2d at 203. In this case, appellee introduced

000276

a letter from United Fire & Casualty claiming "subrogation rights on any recovery made for the medical and hospital expenses paid on behalf of Scott Loftsgard in the amount of $10,142.88." However, he also testified that reimbursement to the insurance company is not required if there was no recovery.

Our intent on remand was that the district court determine whether or not appellee was legally obligated to reimburse United Fire & Casualty from any recovery for medical and hospital expenses -- an obligation analogous to the statutory one in Schonberger. Appellants argue that, since United Fire & Casualty has not made a demand for any portion of the tort recovery, appellee must not be obligated to reimburse the company. We cannot agree that conclusion necessarily follows.

We conclude that the district court erred in its understanding and application of our instructions on remand. We must vacate the district court's judgment on remand, therefore, and remand for a proceeding to determine whether or not appellee will suffer a double reduction in his recovery for medical and hospital expenses if the award is not increased to $10,562.10. This double reduction would only occur if he is under some legal or contractual obligation to repay the insurer from his award. A self-imposed obligation or pledge is not sufficient.

VACATED AND REMANDED WITH INSTRUCTIONS.